

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RYAN C. HENRY, individually and on  
behalf of similarly situated employees,

Case No. 2:04-cv-40346

Plaintiffs,

HONORABLE STEPHEN J. MURPHY, III

v.

QUICKEN LOANS INC., a Michigan  
corporation, and DANIEL B. GILBERT,  
personally and individually,

Defendants.

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**ORDER ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION  
(D/E 529), AS MODIFIED BY STIPULATED ORDER MODIFYING SEPTEMBER 30,  
2008, REPORT AND RECOMMENDATION (D/E 538), GRANTING IN PART AND  
DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT:  
STATUTE OF LIMITATIONS AND HIGHLY COMPENSATED INDIVIDUALS (D/E 437)**

This is a Fair Labor Standards Act ("FLSA") overtime collective action brought under 29 U.S.C. § 201 *et seq.*, involving approximately 422 plaintiffs who worked as "loan consultants" for defendants Quicken Loans Inc. ("Quicken Loans") and Daniel B. Gilbert. Before the Court is defendants' motion for summary judgment on the statute of limitations and on an exemption for highly compensated individuals, filed on October 5, 2007, and the Report and Recommendation of Magistrate Judge Pepe, filed on September 30, 2008, as modified by the Stipulated Order Modifying September 30, 2008 Report and Recommendation, filed October 22, 2008.

The magistrate judge's report and recommendation recommended that defendants' motion for summary judgment be granted in part and denied in part. Specifically, the magistrate judge recommended that the Court dismiss without prejudice three plaintiffs who

never worked for Quicken Loans<sup>1</sup> and two plaintiffs that did not sign and file consents to participate in the case<sup>2</sup>; that the Court dismiss without prejudice all individuals that were not web mortgage bankers during the applicable period<sup>3</sup>; that summary judgment be granted for the time periods that twenty-two individual plaintiffs did not work as web mortgage bankers<sup>4</sup>; that the Court deny summary judgment as to plaintiffs Josh Tait and Kris Hamilton; and that plaintiff Stephen Scheib be dismissed without prejudice but that summary judgment be denied as to plaintiff Derrick Rice. The magistrate judge also notified the parties that any objections must be filed within ten days of service.

On October 15, 2008, plaintiffs filed a motion for reconsideration of the Report and Recommendation, arguing that the Defendants' Exhibit A contained certain errors that were subsequently incorporated in the Report and Recommendation. Following this motion, on October 22, 2008, Magistrate Judge Pepe entered a Stipulated Order Modifying September

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<sup>1</sup>Elizabeth A. Clark, Angel Rodriguez, and Tenesha Smith.

<sup>2</sup>Jeff LeBlanc and Jonathan Auer.

<sup>3</sup>(1) Michael Jankowski, (2) Aimee Welicki, (3) Deborah Newman (Webb), (4) Delores Wilson, (5) John LeClair, (6) Eric Bordeaux, (7) Sean Dillon, (8) Daniel Kostka, (9) Michael Mead, (10) Scott Akey, (11) Gerald Richardson, (12) Chowdhury Taher, (13) Kelly Morrone (Abdilla), (14) John Liston, (15) Denisa Chasteen, (16) Robert Baldwin, (17) Candace Nicholas, (18) Shana Stewart, (19) Christopher Schaecher, (20) Jeffrey Ford, (21) Martin Airgood and (22) Richard Bacholzky.

<sup>4</sup>Identified by names and dates in the Report and Recommendation as (1) Jeffrey Downey (03/11/02-11/05/03), (2) Brian Bekish (02/14/05-02/28/05), (3) Terese Chmielewski (06/03/03-05/24/04), (4) Bryan Howes (04/20/04-08/31/05), (5) Cheryl Rash (10/22/01-06/02/02), (6) Steven Rochen (11/08/02-11/11/05), (7) Joseph Snover (07/02/03-11/13/03), (8) Alberto Todaro (10/15/04-01/18/05), (9) Jason Weldon (10/07/02-09/01/03), (10) Neil Childs (03/05/05-05/04/05), (11) Shawn Wilson (09/20/05-09/08/05), (12) Nicole Abate (02/01/05-03/21/05), (13) Audrey Brooks (04/30/05-05/15/05), (14) Chaz Cunningham (02-22/05-03/02/05), (15) Gregory Festian (10/05/04-10/09/06), (16) Gyhandi Hill (01/24/06-02/01/06), (17) Johann Johnson (03/02/05-04/17/05), (18) Keith Kay (03/02/05-07/28/06), (19) Jeffrey Marshall (08/17/05-04/04/06), (20) Jeff Silverman (03/02/05-09/23/05), (21) James Ussery (01/29/05-11/09/05) and (22) Jessica Williams (01/20/05-01/26/05).

30, 2008 Report and Recommendation(D/E 538). In the stipulated order, the September 30, 2008 report and recommendation was modified to reflect the following: (1) that plaintiff Steven Rochen worked as a web mortgage banker from January 3, 2005 through November 7, 2005, and that summary judgment as to Mr. Rochen's claims should be granted for the time period of November 8, 2005 through November 10, 2005; (2) that plaintiff Jeff Silverman did not work as a web mortgage banker from August 8, 2005 through September 23, 2005, and that summary judgment should be granted on Mr. Silverman's claims for that time period; and (3) that plaintiff Shawn Wilson did not work as a web mortgage banker from August 20, 2005 through September 8, 2005, and that summary judgment should be granted for Mr. Wilson's claims for that time period. In light of the stipulated order modifying the report and recommendation, plaintiffs' October 15, 2008 motion for reconsideration was denied as moot. Stipulated Order, p.1 n.1.

No party has filed objections to the report and recommendations. The Court's standard of review for a magistrate judge's report and recommendation depends upon whether a party files objections. If a party does not object to the report and recommendation, the Court does not need to conduct a review by any standard. See *Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002). As the Supreme Court observed, "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Because neither party filed timely objections to Magistrate Judge Pepe's report and recommendation, see 28 U.S.C. § 636(B)(1)(c), this Court need not conduct a review.

**ACCORDINGLY, IT IS HEREBY ORDERED** that the Report and Recommendation [docket entry 529] as modified by the Stipulated Order Modifying September 30, 2008

Report and Recommendation [docket entry 538] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

**IT IS FURTHER ORDERED** that defendants' motion for summary judgment on the statute of limitations and on an exemption for highly compensated individuals [docket entry 437] is **GRANTED IN PART** and **DENIED IN PART**.

s/Stephen J. Murphy, III  
STEPHEN J. MURPHY, III  
United States District Judge

Dated: March 9, 2009

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 9, 2009, by electronic and/or ordinary mail.

Alissa Greer  
Case Manager